

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL ‘O’

Case No.	2:15-cv-08354-CAS(ASx)	Date	March 24, 2017
Title	KYLE ANTHONY LEWIS v. UNITED STATES AMERICA		

Present: The Honorable CHRISTINA A. SNYDER

Catherine Jeang

Not Present

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: (IN CHAMBERS) - DEFENDANT’S EX PARTE APPLICATION FOR ORDER FOR REOPENING TRIAL RECORD (Dkt. 72, filed March 20, 2017)

On March 20, 2017, defendant United States of America filed an ex parte request to reopen the trial record. Dkt. 72. The government seeks to introduce the declaration of Hector Cardenas, an investigator, and video recordings of plaintiff engaging in physical activities after the 2016 trial. Id. On March 22, 2017, plaintiff Kyle Anthony Lewis filed his opposition. Dkt. 75.

The Court has discretion to reopen or supplement the trial record, upon consideration of “the character of the additional testimony and the effect of granting the motion. The court should also consider the diligence of the moving party, and any possible prejudice to the other party.” Weiland v. Allied Corp., 940 F.2d 670 (9th Cir. 1991) (quotation marks omitted). The government argues that the video evidence seeks to introduce contradicts plaintiff’s testimony regarding the effects of his injury. Plaintiff argues that he would be prejudiced by the introduction of the video because (1) plaintiff has not been provided with the underlying video, only clips; and (2) the video was not properly authenticated because Cardenas does not state how he knows that the person in the video is, in fact, plaintiff. Opp’n at 2–3. In addition, plaintiff argues that the video is not relevant or probative because it is compatible with his trial testimony. Id. at 3. Plaintiff testified at trial that he *does* engage in physical activity and lifting, though this activity later causes pain and immobility. Id.

The Court finds that the videos are relevant to Court’s findings of fact and conclusions of law and would not unduly prejudice plaintiff. Furthermore, the videos were recorded from February 6, 2017 through March 18, 2017. Dkt 72-2. Accordingly, the Court finds that the government diligently filed its motion. The Court therefore concludes that it is appropriate to reopen the trial record to permit the government to

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submit a declaration from Cardenas and video recordings. However, the Court orders the government to produce the complete video recording, to the extent a more complete underlying recording exists, and to properly authenticate the evidence.

The Court will hear oral argument on April 17, 2017 at 10:00 a.m. as to the weight that should be accorded to the government's new evidence.

IT IS SO ORDERED.

Initials of Preparer	00 : 00
	CMJ